

FILED

SEP 30 2019

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

RECEIVED

SEP 30 2019

BY MAIL

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District
Name (under which you were convicted): <u>Corey Ward</u>		4:19CV2684 HEA
Place of Confinement: <u>Federal Correctional Institution at Greenville, Illinois</u>	Prisoner No: <u>47017-044</u>	
Movant:	V.	United States of America

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

United States District Court Eastern District of Missouri 8th Circuit(b) Criminal docket or case number (if you know): 4:17CR00422-1 HEA2. (a) Date of the judgment of conviction (if you know): January 10, 2019 August 15, 2018(b) Date of sentencing: January 10, 20193. Length of sentence: 46 months4. Nature of crime (all counts): 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(a)(2)Felon in Possession of a Firearm

5. (a) What was your plea: (Check one)

(1) Not guilty

☒ (2) Guilty

(3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? N/A

6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge Only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☒ No

8. Did you appeal from the judgment of conviction? Yes ☒ No

9. If you did appeal, answer the following:

(a) Name of court: 11/4

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation of the case (if you know): _____

(f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes

☒ No

11. If your answer to Question 10 was "Yes," give the following information:

(a)(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?
Yes ☒ No

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you file any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?
Yes ☒ No

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition Yes ☒ No

(2) Second petition Yes ☒ No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Counsel's failure to move to dismiss indictment

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
Counsel should have moved to dismiss indictment as indictment did not have all essential elements present and presented to grand jury, that prejudiced petitioner because he's been convicted of a non-crime. All elements of statute for federal crime not met then no crime.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes

☒ No

(2) If you did not raise this issue in your direct appeal, explain why: did not do direct appeal because appeal rights were waived

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes

☒ No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes

☒ No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes

☒ No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?

Yes

☒ No

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket case number (if you know): _____

Date of the court's decision: _____

Result: (attach a copy of the court's opinion or order if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: I did not appeal on this issue because the law at the time of my conviction and sentencing was squarely against me.

GROUND TWO: Plea was unknowly and unintelligently made

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

Petitioner never admitted to all essential elements of 922(g)(1), and counsel allowed petitioner to plea to a crime that is not criminal

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes

No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes

No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes

☒ No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes

☒ No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?

Yes

☒ No

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket case number (if you know): _____

Date of the court's decision: _____

Result: (attach a copy of the court's opinion or order if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Petitioner didn't Appeal on this issue because the law of the land at the time of his conviction and sentencing was squarely against him.

Counsel's failure to challenge "any court of" language and "knowingly"
GROUND THREE: language in 922(g)(1) statute as ambiguous, and did not intend
state convictions to guilty

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
That failure to challenge allowed for the United States to use my prior state
convictions against me when Congress did not intend for state convictions to
be used. Petitioner pled to and was convicted of a non-crime.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes

☒ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes

☒ No

(2) If your answer to Question (c)(1) is "Yes", state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes

☒ No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes

☒ No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?

Yes

☒ No

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket case number (if you know): _____

Date of the court's decision: _____

Result: (attach a copy of the court's opinion or order if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: I didn't Appeal on this issue because the law at the time of conviction and sentencing was squarely against this issue.

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?

Yes

No

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket case number (if you know): _____

Date of the court's decision: _____

Result: (attach a copy of the court's opinion or order if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

Grounds 1 thru 3 have not been previously presented in some federal court because at the time of conviction, pleading, and sentencing the law of the land was squarely against the grounds listed.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type or proceeding, and the issues raised: _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

- (a) At preliminary hearing: Federal Public Defender Diane Wrayan 1010 Market Suite 200 St. Louis Mo
also Federal Public Defender Michelle Monahan 1010 Market Suite 200 St. Louis Mo 63101
- (b) At arraignment and plea: Attorney James W. Schottel, Jr
- (c) At trial: _____

(d) At sentencing: Attorney James W. Schottel, Jr

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitation as contained in 28 U.S.C § 2255 does not bar your motion.* (see below) _____

*The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period limitations shall apply to a motion under this section. The limitation period shall run from the latest of:

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, Movant asks that the Court grant the following relief: Judgement vacated
and conviction expunged from record, immediate release

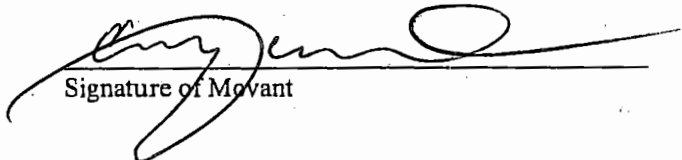
or any other relief to which movant is entitled.

Signature of Attorney (if any)

I, declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on Sep 25, 2019

(month, date, year).

Executed (signed) on 9/25/19 (date)



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. _____

